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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,225	10/19/2001	Jeffery D. Snell	A01P1068	3020
7590 06/09/2004			EXAMINER	
PACESETTER, INC. 15900 Valley View Court Sylmar, CA 91392-9221			SCHAETZLE, KENNEDY	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 06/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/016,225	SNELL, JEFFERY D.	
	Examiner	Art Unit	
	Kennedy Schaetzle	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 28-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,6,9-14 and 28-34 is/are rejected.
- 7) ☒ Claim(s) 4,7,8 and 35-37 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/19/01</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of the invention of Group I (claims 1-14 and 28-37) in the communication received March 26, 2004 is acknowledged.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 5, 6, 9-14 and 28-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirkpatrick et al. (Pat. No. 6,480,743).

Regarding claim 1, Kirkpatrick et al. disclose a system for use with implantable medical stimulation devices comprising a plurality of programmers (312, 328, 330, 332, etc.) operative to program operations of implantable stimulation devices (110) and to process information received from said devices, and a programmer backup system (322) coupled to the plurality of programmers and operative to backup and synchronize information used by the programmers (see col. 10, lines 18-32 and col. 11, lines 47-57). The examiner considers the programmers to be synchronized in that they all have access to the same data via network 320 (note the present specification page 21, lines 22-24). Related comments apply to independent claim 28.

Although the system of Kirkpatrick et al. is directed to implantable neurostimulators as opposed to implantable cardiac stimulators, those of ordinary skill in the art would have understood the system of Kirkpatrick et al. to apply to any implantable stimulator device where multiple programmers are used and where programming and data transfer are required in order to effectively adjust therapy to suit the needs of the patient. Clearly implantable cardiac stimulators fall within this category

and therefore those of ordinary skill in the art would have seen the obviousness of utilizing the backup and synchronization system detailed by Kirkpatrick et al. in cardiac stimulation systems.

Regarding claim 2 and claims with similar limitations, note again col. 10, lines 18-32 and col. 11, lines 47-57. The examiner considers the aggregation of information from the multiple programmers to equate to the merging of information. This information is selectively transmitted to the programmers as requested via the network.

Concerning claim 3 and claims with similar limitations, since the claim covers all possible conditions of transmission, the system of Kirkpatrick et al. inherently would include at least one of the listed options. As stated in col. 10, the database allows the patient's physician to access important data anywhere in the world that there is a programmer. In this case, it would have been considered obvious by those of ordinary skill in the art to grant the physician in the very least access on demand.

Regarding claims 5 and 6, Kirkpatrick et al. teach that the programmer 312 may consist of a standard commercially available PC running a standard operating system such as Windows®. Given the fact that Kirkpatrick et al. further disclose that one may employ the Internet to connect the various programmers to the database, it would have been considered blatantly obvious to employ a browser system to allow for the disclosed modification and display of database information (note also col. 11, lines 4-10 and 19-24). Any time the physician uploads information from the medical device to the database, the database is considered to have been modified.

Concerning claim 9, note col. 10, lines 18-25. The examiner considers EEG information to constitute patient diagnostic and/or personal data. To backup and synchronize cardiac ECG data when dealing with a heart related device would have been considered a matter of obvious design. The particular type of patient specific data considered important would have obviously depended upon the particular medical implant in use.

In reference to claims 10-14, since base claim 9 only requires the backup and synchronization of *at least one* of programmer software data, programmer setup and configuration data, etc., and since claims 10-13 do not require that any one particular

set of data be backed up and synchronized, but merely further define the various data sets in the list of claim 9, any device that at least contains one of the items listed in claim 9 would automatically read on claims 10-14. This is akin to reciting a claim that requires an invention to contain at least one of elements A, B and C, and then further elaborates on elements B and C in subsequent claims. As long as the prior art still contains element A, it doesn't matter how detailed elements B and C are later defined.

Concerning claim 14 in particular, note col. 11, lines 52-57.

Regarding claims 30 and 31, although it would appear that the central system of Kirkpatrick et al. is operative to transmit the set of merged data to each programmer on demand, whether one wishes to transmit data continuously or periodically would depend upon the particular situation at hand and the type of communication channel employed to gain access to the central database. It is old and well known for example, that providing periodic backup of data eliminates the need for operator intervention, thus possibly resulting in more secure data files by not relying on the operator to initiate synchronization. Continuous communication may not be necessary to adequately update the programmer after hours when the programmer is not in use anyway, but may be desirable when conditions are fast-changing and when the most up-to-date information and programming are required. Those of ordinary skill in the art would have therefore considered the frequency of transmission to be a matter of obvious design dictated by the conditions of use.

Allowable Subject Matter

4. Claims 4, 7, 8 and 35-37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record does not appear to disclose the recited backup system operative to detect any inconsistent information received from the plurality of programmers that cannot be effectively merged (claims 4 and 35).

Regarding claims 7 and 36, the prior art of record does not appear to disclose the recited backup system that is operative to synchronize information only among programmers within a particular classified grouping.

Regarding claims 8 and 37, the prior art of record does not appear to disclose the recited backup system that is operative to synchronize only selected types of classifiable information stored within the programmers.

Conclusion

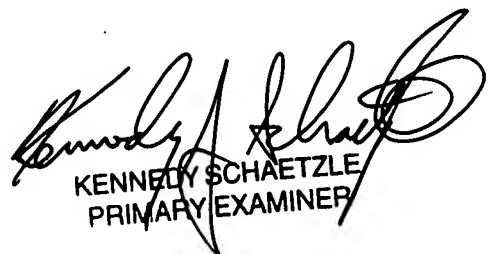
5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kennedy Schaetzle whose telephone number is 703 308-2211. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 703 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KJS
June 4, 2004


KENNEDY SCHAETZLE
PRIMARY EXAMINER